



**COUNTY OF SAN LUIS OBISPO  
DEPARTMENT OF PLANNING AND BUILDING  
STAFF REPORT**

**Tentative Notice of Action**

*Providing the wise use of land  
Helping build great communities*

MEETING DATE June 17, 2005 LOCAL EFFECTIVE DATE July 1, 2005 APPROX FINAL EFFECTIVE DATE July 22, 2005	CONTACT/PHONE Ryan Hostetter (805)788-2351	APPLICANT Albert Malek	FILE NO. DRC2004-00104
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**SUBJECT**  
Request by Albert and Connie Malek for a Minor Use Permit/Coastal Development Permit to permit an existing approximately 14' x 30' swimming pool surrounded by an on-grade concrete pool deck with small iron protective fence that totals approximately 1,260 square feet in site area. The project disturbed approximately 1,260 square feet of a 1.2 acre parcel, and removed approximately 40 cubic yards of soil. The project is within the Residential Suburban land use category and is located at 1565 Hollister Lane in the Community of Los Osos. The project is located at 1565 Hollister Lane in the Community of Los Osos, which is located in the Estero Planning Area.

**RECOMMENDED ACTION**  
Approve Minor Use Permit/Coastal Development Permit DRC2004-00104 based on the findings listed in Exhibit A and the conditions listed in Exhibit B.

**ENVIRONMENTAL DETERMINATION**  
Adopt the Mitigated Negative Declaration in accordance with the applicable provisions of the California Environmental Quality Act, Public Resources Code Section 21000 et seq. and CA Code of Regulations Section 15000 et seq.

<b>LAND USE CATEGORY</b> Residential Suburban	<b>COMBINING DESIGNATION</b> Local Coastal Plan, Sensitive Resource Area, Streams and Riparian Vegetation, Archaeologically Sensitive Area	<b>ASSESSOR PARCEL NUMBER</b> 074-284-006	<b>SUPERVISOR DISTRICT(S)</b> 2
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**FINAL ACTION**  
This tentative decision will become the final action on the project, unless the tentative decision is changed as a result of information obtained at the administrative hearing or is appealed to the County Board of Supervisors pursuant Section 23.01.042 of the Coastal Zone Land Use Ordinance; effective on the 10th working day after the receipt of the final action by the California Coastal Commission. The tentative decision will be transferred to the Coastal Commission following the required 14 calendar day local appeal period after the administrative hearing.

The applicant is encouraged to call the Central Coast District Office of the Coastal Commission in Santa Cruz at (831) 427-4863 to verify the date of final action. The County will not issue any construction permits prior to the end of the Coastal Commission process.

ADDITIONAL INFORMATION MAY BE OBTAINED BY CONTACTING THE DEPARTMENT OF PLANNING & BUILDING AT:  
COUNTY GOVERNMENT CENTER ♦ SAN LUIS OBISPO ♦ CALIFORNIA 93408 ♦ (805) 781-5600 ♦ FAX: (805) 781-1242

PLANNING AREA STANDARDS: Creek Setback <i>Does the project meet applicable Planning Area Standards: Yes - see discussion</i>	
LAND USE ORDINANCE STANDARDS: Local Coastal Plan, Height Limitation, Setbacks, Sensitive Resource Area, Streams and Riparian Vegetation <i>Does the project conform to the Land Use Ordinance Standards: Yes - see discussion</i>	
EXISTING USES: Single family residence	
SURROUNDING LAND USE CATEGORIES AND USES: <i>North: Residential Suburban / Residential</i> <i>East: Residential Suburban / Residential</i> <i>South: Residential Suburban / Residential/Los Osos Creek</i> <i>West: Residential Suburban / Residential</i>	
TOPOGRAPHY: Site is level to moderately sloping at creek bank	VEGETATION: grasses, forbs, riparian vegetation, oaks
PROPOSED SERVICES: Water supply: Community system Sewage Disposal: Community sewage disposal system Fire Protection: South Bay Fire	ACCEPTANCE DATE: April 5, 2005

## DISCUSSION

This Minor Use Permit is for an as-built pool which includes an on grade deck surrounding the pool. The County Department of Planning and Building issued an over-the-counter pool permit prematurely for the subject pool and deck because a land use permit had yet to be processed for the site. Both the pool and deck have been constructed. During the construction phase some neighbors contacted the County about work being done on the site, and in close proximity to the creek (within 100 feet). The Code Enforcement division responded to the neighbors concerns and asked the applicant to stop all work (at this point the pool had already been constructed). Based on review of the property staff determined that this pool requires a Minor Use Permit because the site is within 100 feet of a mapped coastal stream and appealable to the Coastal Commission (finalization of this Minor Use Permit will close the enforcement case as well).

## PLANNING AREA STANDARDS:

Creek Setbacks: The minimum setback along Los Osos Creek is 50 feet. *This project is encroaching into the riparian setback area. The pool is approximately 43' to the bank of the creek, and the on grade pool deck with fence is approximately 31 feet from the edge of the bank. Generally the riparian setback is measured from the edge of the riparian vegetation, however in this case the riparian has been trimmed in previous years to follow the line of the bank. The project is required to restore the riparian vegetation back to its original condition as shown in the Development Plan and Variance which was approved for the existing residence (D880021D & D880022V). Staff supports this encroachment with the proposed mitigation which requires the riparian area be restored.*

## LAND USE ORDINANCE STANDARDS:

### Section 23.07.164 - Sensitive Resource Area

Following are the required findings for development located within a Sensitive Resource Area:

1. *The development will not create significant adverse effects on the natural features of the site or vicinity that were the basis for the Sensitive Resource Area designation, and will preserve and protect such features through the site design.*
2. *Natural features and topography have been considered in the design and siting of all proposed physical improvements.*
3. *Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.*
4. *The soil and subsoil conditions are suitable for any proposed excavation; site preparation and drainage improvements have been designated to prevent soil erosion, and sedimentation of streams through undue surface runoff.*

The proposed project includes mitigation measures which reduce impacts to the riparian area. The project as mitigated will not create significant adverse effects on the sensitive resource area. There was no clearing of riparian vegetation with the construction of the pool, and a minimal amount of soil was removed for the instillation of the pool (approx. 40 cu. yds.).

*Section 23.07.174 - Streams and Riparian Vegetation*

"Development adjacent to a coastal stream shall be sited and designed to protect the habitat and shall be compatible with the continuance of such habitat." The proposed project is designated and located so that there will be minimal impacts to the surrounding sensitive vegetation. The project will include a restoration plan for the riparian corridor on site which will improve the existing condition of the riparian habitat.

*Section 23.07.120 - Local Coastal Plan*

The project site is located within the California Coastal Zone as determined by the California Coastal Act of 1976 and is subject to the provisions of the Local Coastal Plan.

*Section 23.01.043 - Appeals to the Coastal Commission (Coastal Appealable Zone)*

The project is appealable to the Coastal Commission because the site is within 100 feet of a coastal stream (Los Osos Creek).

*Section 23.04.124 - Height Requirements*

The Coastal Zone Land Use Ordinance determines the height requirement at 35' for the Residential Suburban Land Use Category. *This project meets this height requirement.*

*Section 23.04.100 - Setback Requirements*

Required setbacks are as follows: Front 25 feet, Side 30 feet (not including the east side with the creek), and Rear 30 feet. The side setback of 5 feet to the west of the house is existing and was approved with a variance to allow the house to be located as far from the riparian habitat as possible. The pool can be located within this 30 foot setback area under section 23.04.104 b as it is considered earthwork that is not higher than 30 inches from the surrounding grade. *This project complies with this requirement.*

COASTAL PLAN POLICIES: This project is in compliance with the Coastal Plan Policies, the most relevant policies are discussed below.

**Public Works:**

*Policy 1: Availability of Service Capacity applies to the project. The applicant needs to demonstrate that adequate public service capacities are available to serve the proposed project by submitting a water and sewer will-serve letter. The project is conditioned to provide a will serve letter. This project is also located outside the moratorium area in Los Osos.*

**Shoreline Access:**

*Policy 2: New Development shall provide access to the beach. The proposed project is consistent with this policy because it is not inhibiting access to the beach. This project is not located near the coastline.*

**Environmentally Sensitive Habitats:**

*Policy 1: Land Uses within or adjacent to Environmentally Sensitive Habitats. The project is located within an environmentally sensitive habitat area, and the project has been sited and designed to least impact the sensitive habitat area. The project also includes a restoration plan which will improve the existing condition of the riparian habitat on site.*

*Policy 2: Permit requirements. The project as proposed will not have a significant impact on the sensitive habitat and is consistent with the biological continuance of the habitat because the proposed project includes a restoration plan for the riparian area which will improve the sensitive habitat on site.*

*Policy 3: Habitat restoration. The County should require the restoration of damage habitats as a condition of approval. The proposed project includes a restoration plan.*

*Policy 18: Coastal Streams and Riparian Vegetation. This project as proposed will not have a negative impact on the riparian vegetation located on the property, and will enhance the riparian area with the implementation of the restoration plan.*

*Policy 19: Development in or adjacent to a coastal stream. The proposed project will not degrade the coastal habitat and will be compatible with the continuance of the habitat.*

*Policy 24: Riparian Vegetation. This project will not have a negative impact on the riparian vegetation located on the property.*

**Archaeology:**

*Policy(s) 1 & 4: Preliminary Site Survey for Development within Archaeologically Sensitive Areas. Policy 1 focuses on the protection of archaeological resources, and that the county shall protect both known and potential archaeological resources. Policy 4 requires a preliminary site survey conducted by a qualified archaeologist that is knowledgeable in Chumash culture. A cultural resources survey and impact assessment for the property was conducted by Parker and Associated on February 26, 2005 for the existing pool. The report specifically evaluated the construction of the pool and if the grading and construction had any impact on archaeological resources. Some sub-surface testing was also completed adjacent to the pool to evaluate if any resources had been impacted with the excavation for the pool. The report found that no significant resources had been impacted. There is a known archaeological site within the vicinity, however it is located far enough to the north that this project would not have an impact on those resources.*

Does the project meet applicable Coastal Plan Policies: Yes, as conditioned

COMMUNITY ADVISORY GROUP COMMENTS: None as of 5/19/05.

**AGENCY REVIEW:**

Public Works- Recommend approval

County Fire/CDF- No response

California Coastal Commission - No response

Los Osos Community Services District - No response

Los Osos Community Advisory Council - No response

Staff report prepared by Ryan Hostetter and reviewed by Matt Janssen.

## EXHIBIT A - FINDINGS

### *Environmental Determination*

- A. The Environmental Coordinator, after completion of the initial study, finds that there is no substantial evidence that the project may have a significant effect on the environment, and the preparation of an Environmental Impact Report is not necessary. Therefore, a Mitigated Negative Declaration (pursuant to Public Resources Code Section 21000 et seq., and CA Code of Regulations Section 15000 et seq.) has been issued on April 21, 2005 for this project. Mitigation measures are proposed to address biological resources are included as conditions of approval.

### *Minor Use Permit*

- B. The proposed project or use is consistent with the San Luis Obispo County General Plan because the use is an allowed use and as conditioned is consistent with all of the General Plan policies.
- C. As conditioned, the proposed project or use satisfies all applicable provisions of Title 23 of the County Code.
- D. The establishment and subsequent operation or conduct of the use will not, because of the circumstances and conditions applied in the particular case, be detrimental to the health, safety or welfare of the general public or persons residing or working in the neighborhood of the use, or be detrimental or injurious to property or improvements in the vicinity of the use because the creek bank stabilization project will not conflict with the surrounding lands and uses.
- E. The proposed project or use will not be inconsistent with the character of the immediate neighborhood or contrary to its orderly development because the project is a temporary use and will not conflict with the surrounding lands and uses.
- F. The proposed project or use will not generate a volume of traffic beyond the safe capacity of all roads providing access to the project, either existing or to be improved with the project because the project will not increase the amount of vehicle trips from the existing residence located on a paved local street (Hollister Lane).

### *Coastal Access*

- G. The proposed use is in conformity with the public access and recreation policies of Chapter 3 of the California Coastal Act. The project is not near the coastline and will not have an effect on coastal access.

### *Sensitive Resource Area*

- H. As conditioned, the development will not create significant adverse effects on the natural features (Los Osos Creek) of the site or vicinity that are the basis for the Sensitive Resource Area designation, and will preserve and protect such features through site design because the project has been designed to include a restoration plan which will enhance the sensitive resource area .
- I. Natural features and topography have been considered in the design and siting of all proposed physical improvements because the proposed project is located as far away from the creek area as possible.

- J. Any proposed clearing of topsoil, trees, or other features is the minimum necessary to achieve safe and convenient access and siting of proposed structures, and will not create significant adverse effects on the identified sensitive resource.
- K. The soil and subsoil conditions are suitable for any proposed excavation and site preparation and drainage improvements have been designed to prevent soil erosion, and sedimentation of streams through undue surface runoff.

## **EXHIBIT B - CONDITIONS OF APPROVAL**

### **Approved Development**

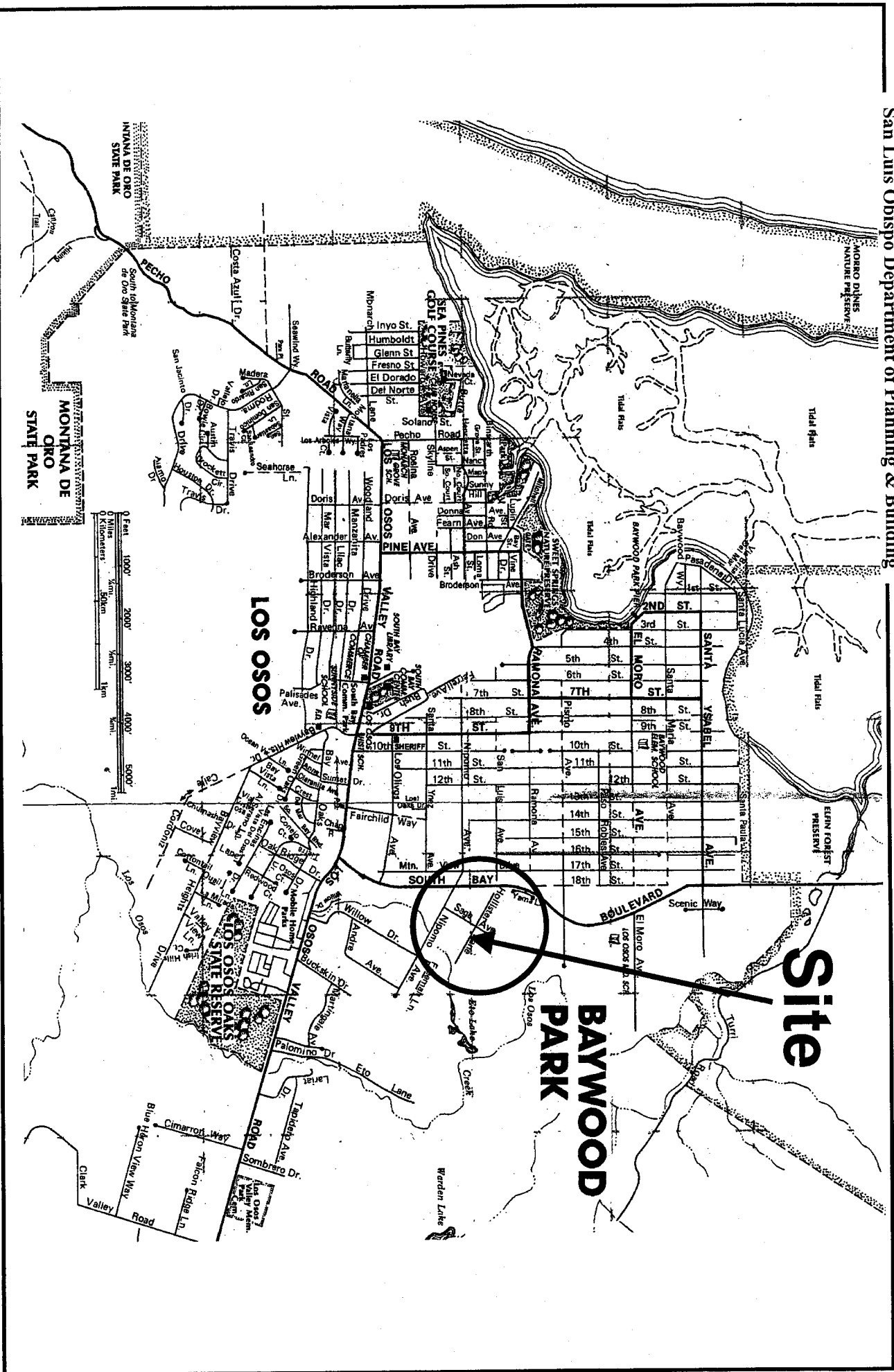
1. This approval authorizes an approximately 14' x 30' swimming pool surrounded by an on grade concrete pool deck with small iron protective fence that totals approximately 1,260 square feet in site area.
2. All development shall be consistent with the approved site plan and approved restoration plan.

### **Biological Resources**

3. **Prior to finalization of permit COD2004-00069, and prior to use of the pool,** the applicant shall submit a restoration plan for the revegetation and restoration of the riparian area on site, and the riparian area shall be restored to its original condition. The original condition is determined in a previous land use permit on the property (see attached graphic of restoration area for the existing residence permit no. D880021D & D880022V ). This restoration plan shall be completed by a qualified biologist (see county list of qualified biologists) familiar with native riparian planting design and shall prepare the plan for review and approval by the Department of Planning and Building. The plan shall incorporate, but not be limited to, the following:
  - A. Quantity, location (shown on a site map), and species of vegetation to be planted;
  - B. Planting schedule;
  - C. Success criteria for vegetation establishment;
  - D. Anticipated maintenance schedule; and,
  - E. Field monitoring and reporting schedule.

### **Miscellaneous**

4. **Prior to use of the pool and the finalization of the enforcement case (COD2004-00069),** the applicant shall contact the Department of Planning and Building to have the site inspected for compliance with the conditions of this approval.
5. This permit is valid for a period of 24 months from its effective date unless time extensions are granted pursuant to Land Use Ordinance Section 23.02.050. This permit is generally considered to be vested once a building permit has been issued and substantial site work has been completed. Substantial site work is defined (Section 23.02.042) as site work progressed beyond grading and completion of structural foundations; and construction is occurring above grade ('sticks in the air').

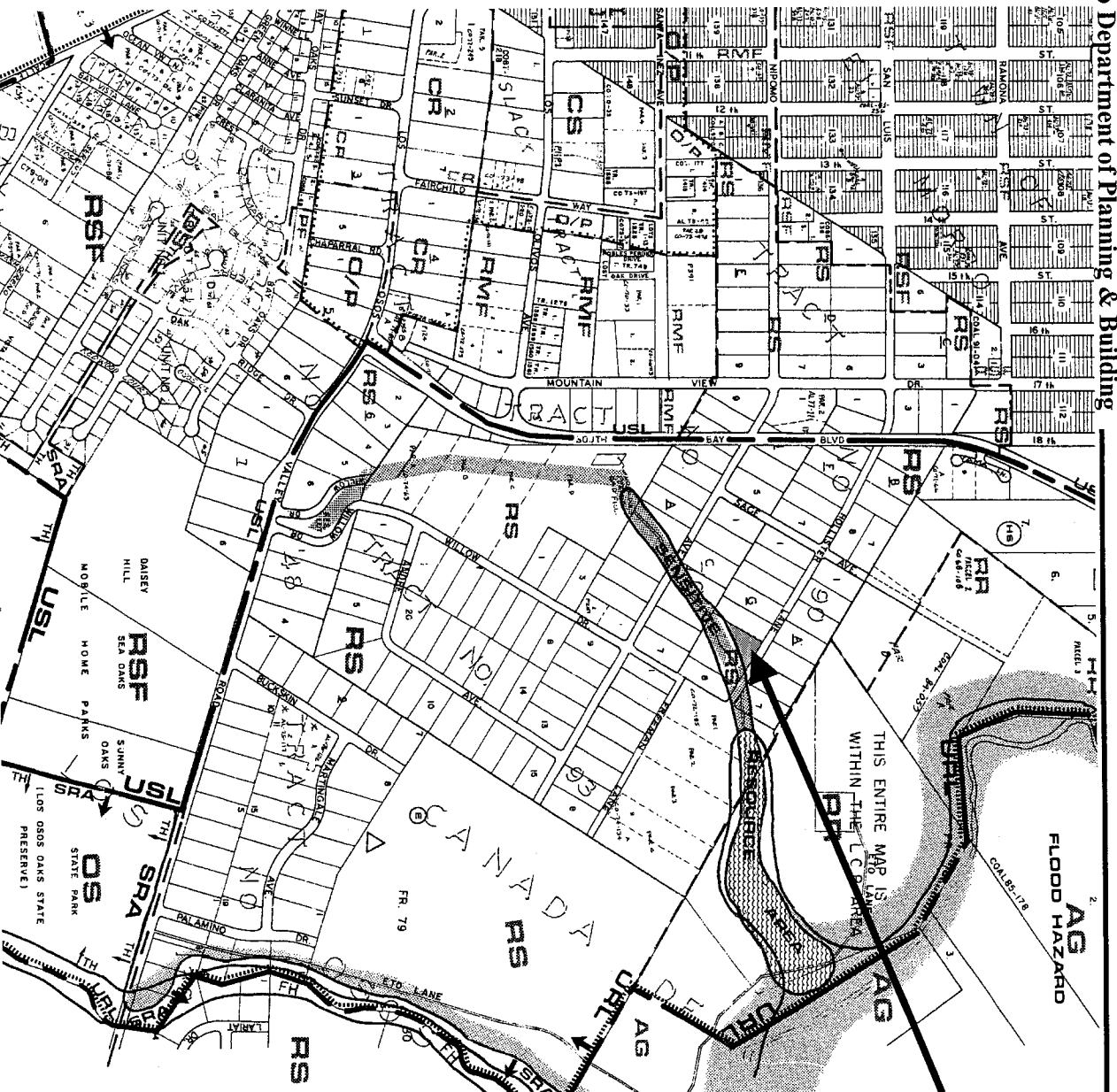


Project  
Minor Use Permit  
Malek/ DRC2004-00104



Exhibit  
Vicinity Map





**Site**

Project

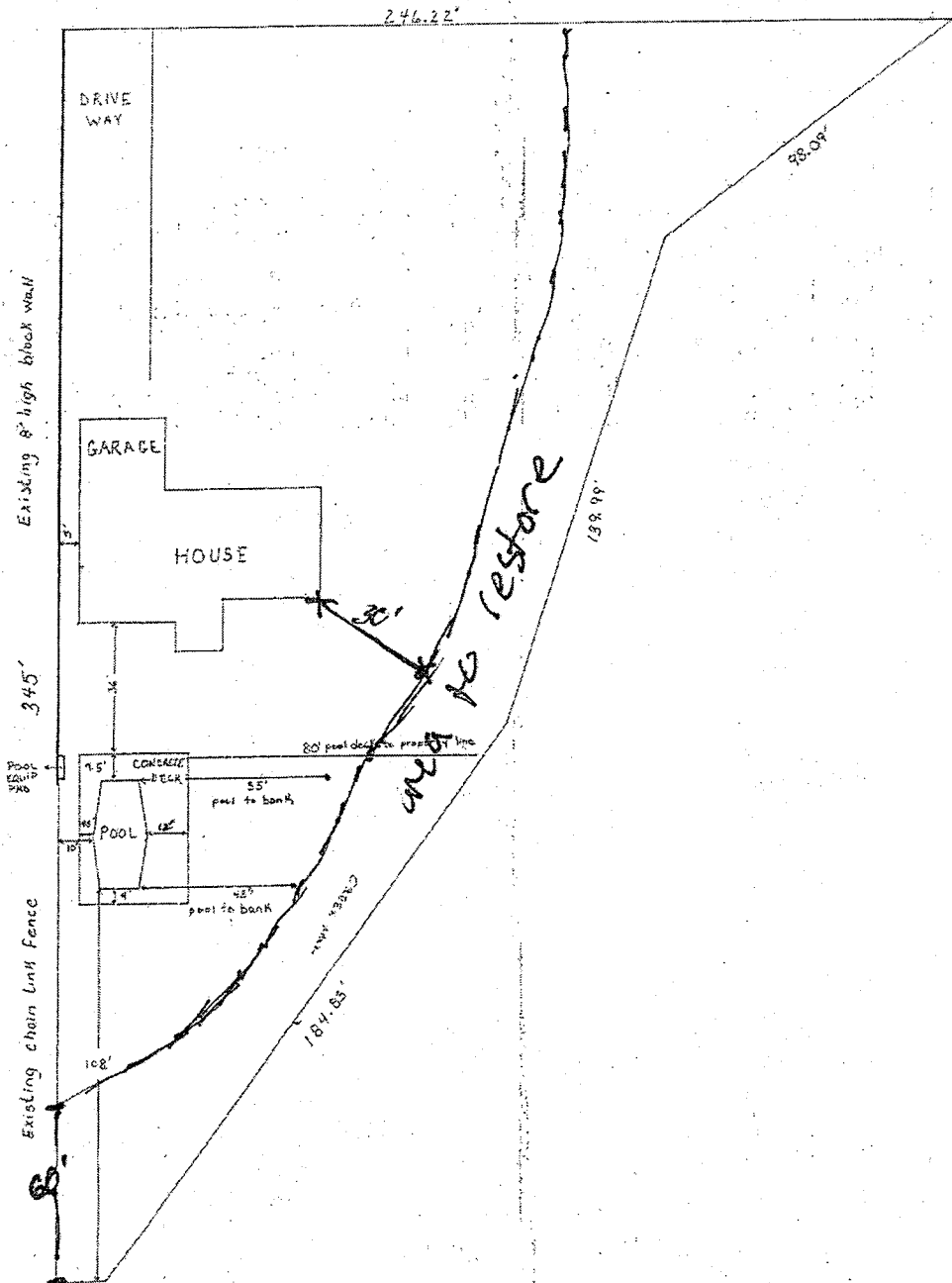
Minor Use Permit  
Malek/ DRC2004-00104



Exhibit

Land Use Category [RS]

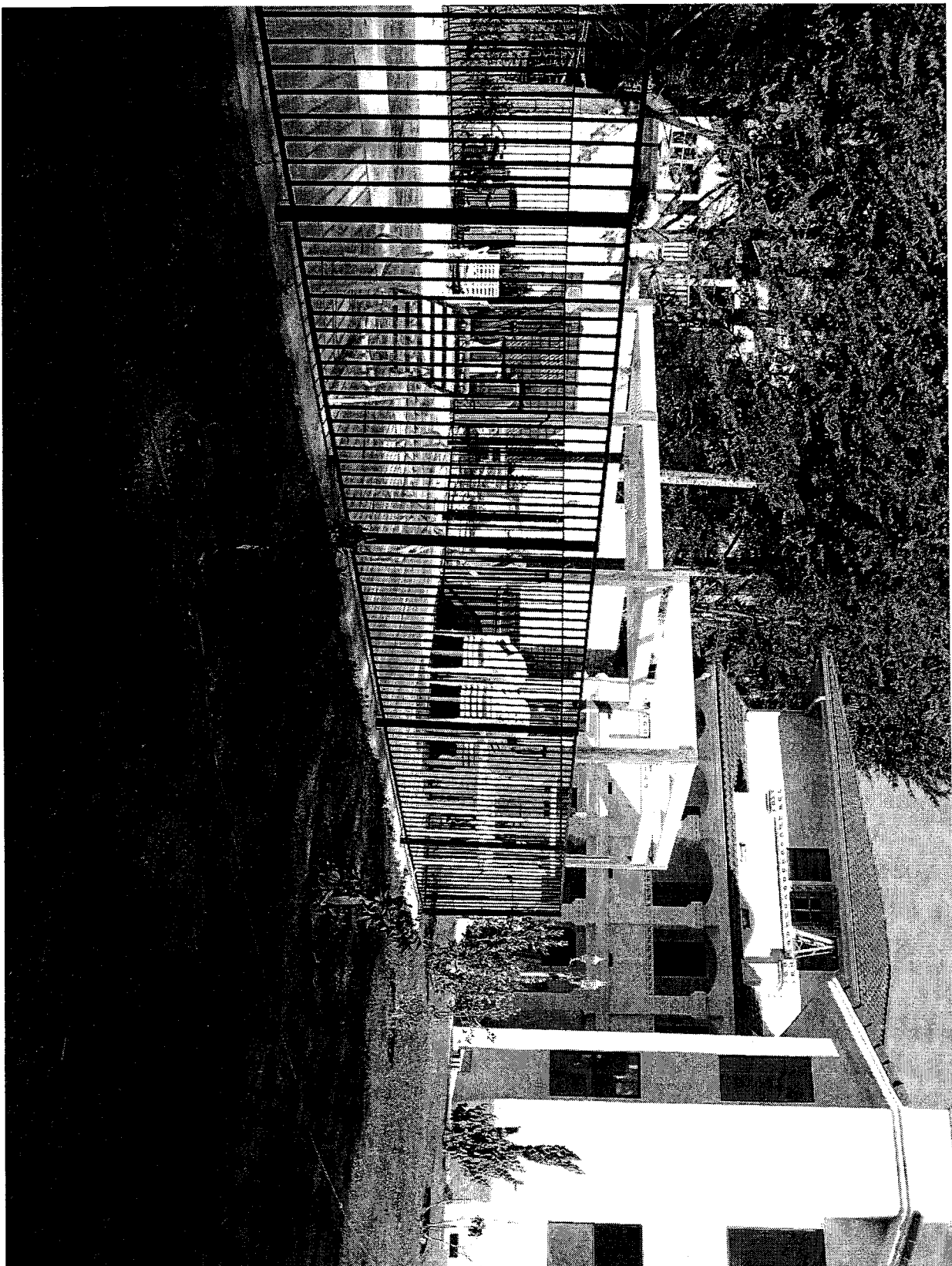
HOLLISTER LN.



Project  
Minor Use Permit  
Malek/ DRC2004-00104



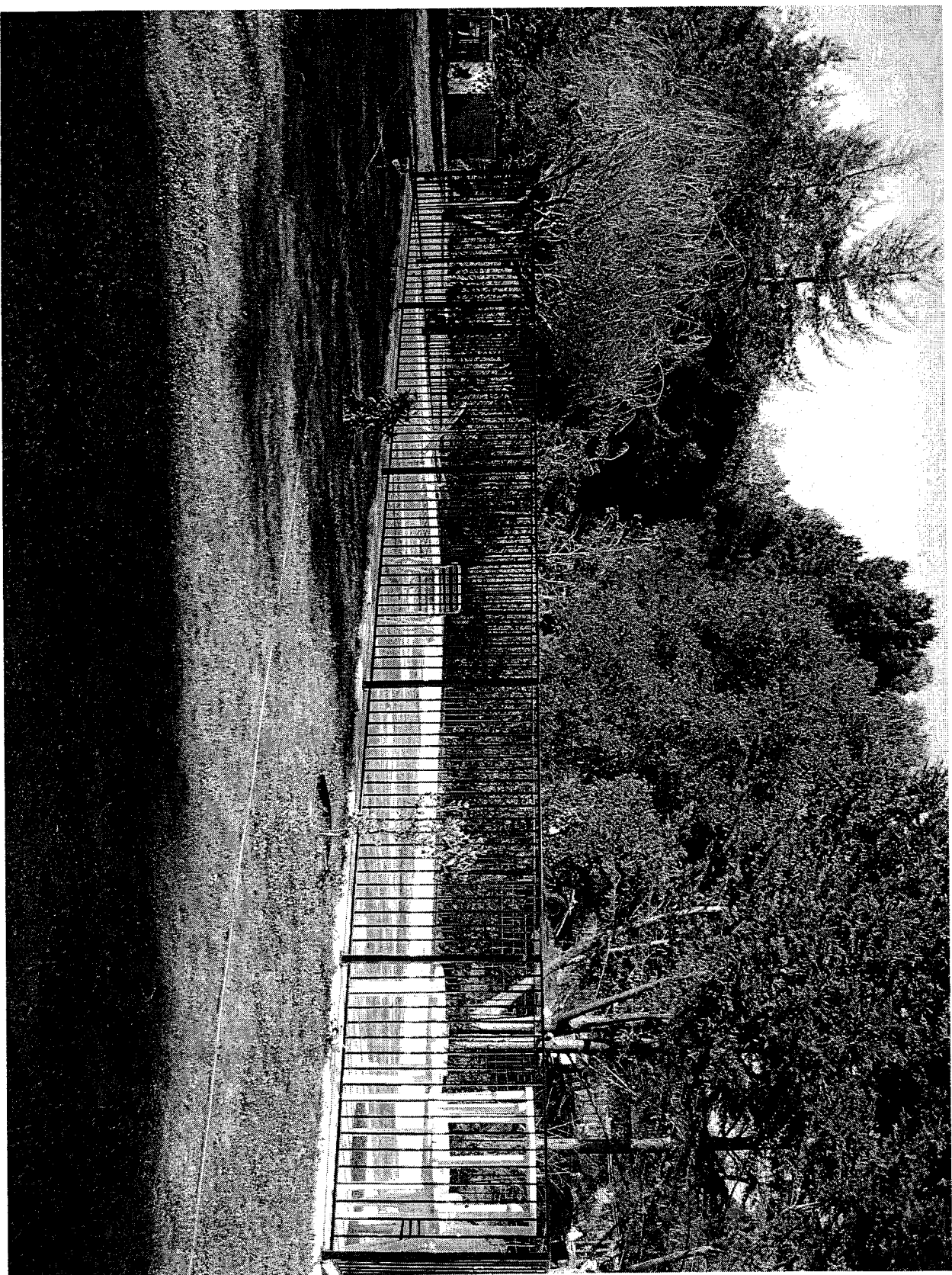
Exhibit  
Site Plan



Project  
Minor Use Permit  
Malek/ DRC2004-00104



Exhibit  
Photograph 1



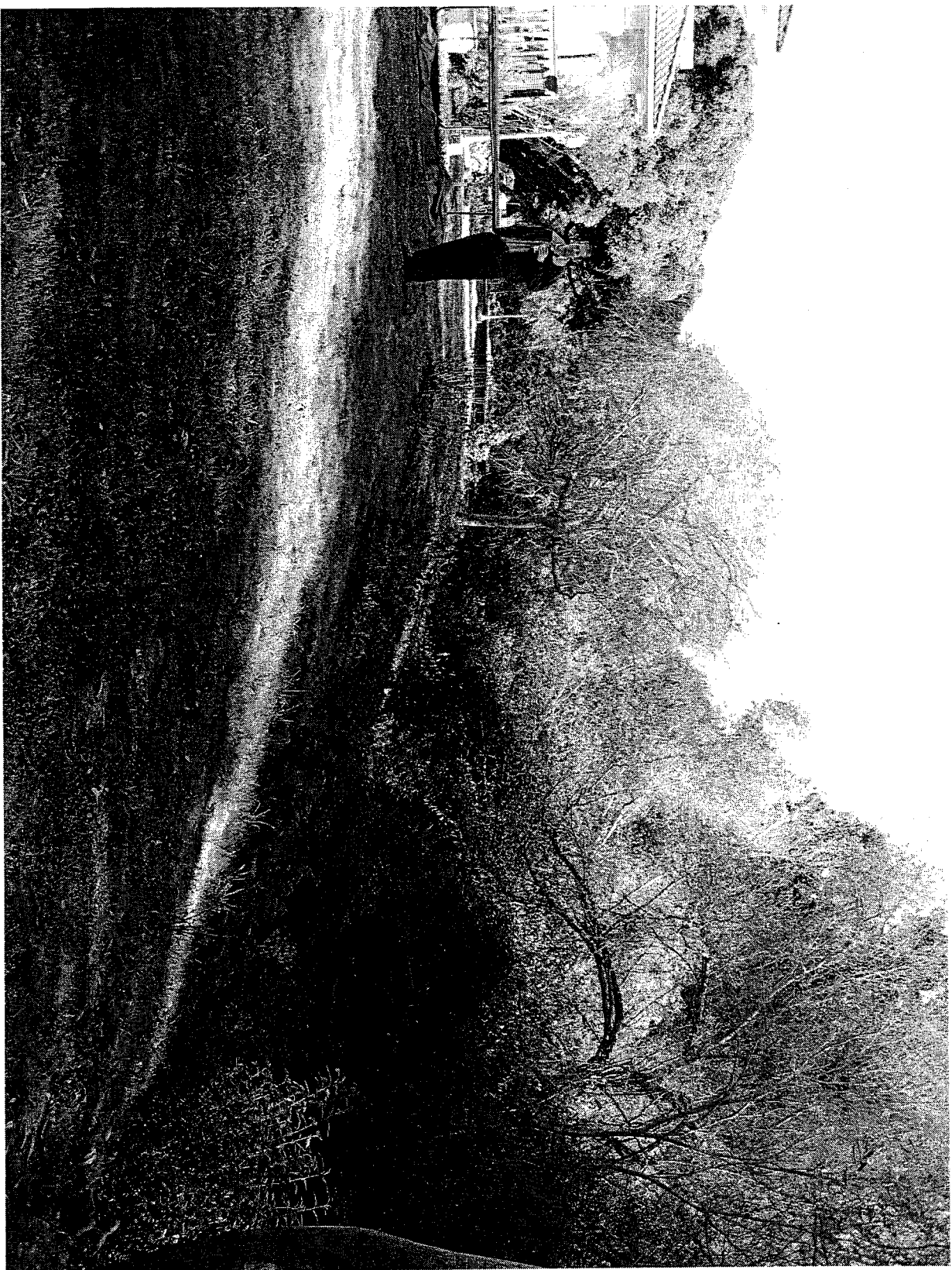
Project

Minor Use Permit  
Malek/ DRC2004-00104



Exhibit

Photograph 2

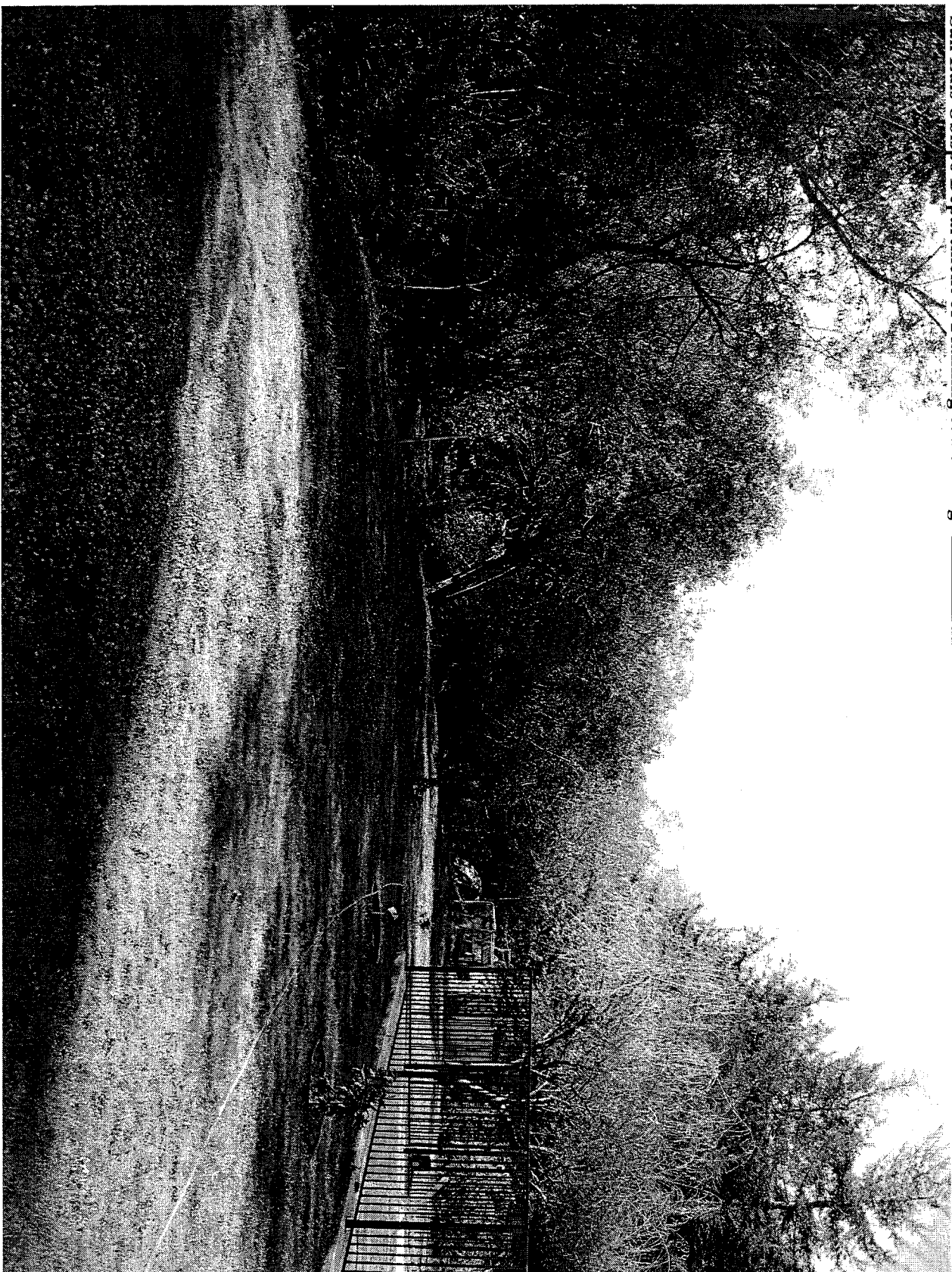


Project  
Minor Use Permit  
Malek/ DRC2004-00104



Exhibit  
Photograph 3





Project

Minor Use Permit  
Malek/ DRC2004-00104



Exhibit

Photograph 4